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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,751	12/21/2000	Brian W. Hedrick	104014	1028

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EXAMINER

NORTON, NADINE GEORGIANNA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/746,751

Applicant(s)

HEDRICK, BRIAN W.

Examiner

Nadine Norton

Art Unit

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-- The MAILING DATE f this c mmunicati n appears on the c ver sheet with th corresp ndence address --

## Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Withdrawal of Election/Restriction Requirement*

Applicant's arguments in paper no.11, filed 5-7-07 are persuasive in rebutting the previous restriction. It is agreed that the claimed process could not be accomplished with another apparatus. The apparatus claims are now included in the modified rejection below.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 12-16, and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lomas (6,010,618) in view of Tyson (2,472,502).

Applicant is claiming a method and apparatus for stripping entrained and/or adsorbed hydrocarbons from particulate material. Applicant's process involves the use of a plurality of sloped baffles with a plurality of openings with specific specifications as defined in the claims.

The reference of Lomas (6,010,618) discloses an FCC process involving the stripping of particulates in the form of catalyst with sloped baffles containing a series of holes. See column 8, lines 65-68. The catalyst is passed downward and stripping gas is passed upward in a countercurrent manner. See column 9, lines 1-5. Lomas discloses an additional step wherein the stripped particles containing coke are regenerated. See column 9. lines 1-5.

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The reference of Lomas (6,010,618) succeeds in disclosing countercurrent stripping in the presence of sloped baffles containing multiple holes and coked catalyst regeneration steps corresponding to those claimed by applicant.

A difference is noted between the reference of Lomas (6,010,618) and applicant's claimed invention. The reference is silent about the specific configurations of the holes in the baffles.

The reference of Tyson (2,472,502) illustrates that better stripping is obtained with an apparatus configuration containing multiple openings over the entire surface of a baffle (such as a grate like configuration of baffles). See column 1, lines 50-55 and column 2, lines 1-15 and 24-29.

It would have been obvious to one of ordinary skill in the art the time the invention was made to modify the apparatus of Lomas (6,010,618) to include multiple openings over the entire surface of the baffles because the reference of Tyson (2,472,502) illustrates that multiple openings in the baffles desirably improves the degree of stripping. In addition, applicant's specifically claimed holes would function similar to the grate openings in the disclosure of Tyson (2,472,502) because both sets of openings similarly allow better passage of material during the stripping process.

### ***Claim Rejections - 35 USC § 103***

Claims 9-11 and 17- 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lomas (6,010,618) in view of Tyson (2,472,502) as applied to claims 1-8, 12-16, and 19-27 above, and further in view of Johnson et al.(5,531,884).

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It is noted that the modified teachings of Lomas (6,010,618) are silent about the flux rate through the stripper and the angle of the baffles.

The reference of Johnson et al.(5,531,884) is cited to illustrate that strippers are known to contain plates with angles of 30-60 degrees. See column 3, lines 45-55. Johnson et al.(5,531,884) also discloses a catalyst flux of 39 lb/ft<sup>2</sup>/s (140,400 lb/ft<sup>2</sup>/hr). See column 13, lines 20-25.

It would have been obvious to one of ordinary skill in the art at the time the invention was made practicing the modified process of Lomas (6,010,884) to select baffle angles and stripper flux rates overlapping those claimed by applicants because the reference of Johnson et al.(5,531,884) illustrates that such angles and flux rates are successful for accomplishing stripping.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claim 1 stands provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 09/877,981.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Application No. 09/877,981 defines a baffle slope of less than or equal to  $10^{\circ}$  whereas the present application is silent about the specific angle of the slope.

The angle of the slope of the apparatus is not considered to be a patentably distinguishing limitation for the claimed process. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select any slope that would accomplish desirable stripping, including the specific slope defined in the claims of Application No. 09/877,981, because it has been held that invention in a method must be found in the steps performed and not the apparatus employed. See Ex Parte Hart, 117 USPQ 193 (Bd. PatApp. & Int. 1958).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-8 and 11-16 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 17-20 of copending Application No. 09/990,244. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of Application No. 09/990,244 include different limitations defining the shape of the baffles employed during the claimed stripping process.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the present process would accomplish similar stripping to the process defined in

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the claims of U.S. Application No.09/990,244 despite slight structural differences in the baffles employed because similar countercurrent particle/stripping gas contacting steps are performed. It has been held that invention in a method must be found in the steps performed and not the apparatus employed. See Ex Parte Hart, 117 USPQ 193 (Bd. PatApp. & Int. 1958).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Applicant's arguments filed 5-7-03 in paper no.12 have been fully considered but they are not persuasive.

Applicant's arguments asserting that there is no motivation to combine the teachings of Tyson with Lomas are not persuasive. In response, is maintained that Tyson's teaching of better stripping with an apparatus configuration containing multiple openings over the entire surface of a baffle provides motivation to include openings over the entire surface of the baffle of Lomas.

Applicant's arguments asserting that the double patenting rejections are not proper because the applications applied in the rejection were filed "after" the present application are not persuasive. In response, it is maintained that filing dates do not serve as a means for overcoming a double patenting rejection. There exists no requirement that an application applied in a double patenting rejection have an earlier filing date. The submission of a terminal disclaimer is still required to prevent dual ownership in the event both applications issue as patents.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadine Norton whose telephone number is 703-305-2667. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

N.N.

July 13, 2003

**NADINE G. NORTON**  
**PRIMARY EXAMINER**

A handwritten signature in cursive script, appearing to read "Nadine Norton", written in black ink.